IN THE

Supreme Court of the United States

No. 71-1155

PHYLLIS N. FIELDS, Individually and as Guardian of Janet Marie Fields, Lori Alison Fields and Jan Scott Fields

Petitioners

—vs—

THE TRAVELERS INSURANCE COMPANY;
BARBARA G. FIELDS, Individually and as Administratrix of the Estate of Jan A. Fields, Deceased; and
CHARLES P. WAGNER, Administrator of the Estate of Jan A. Fields, Deceased

Respondents

BRIEF ON BEHALF OF RESPONDENT, BARBARA G. FIELDS, ADMINISTRATRIX OF THE ESTATE OF JAN A. FIELDS, DECEASED, IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

STATEMENT OF THE CASE

This case was commenced in the United States District Court for the Eastern District of Kentucky by Respondent, The Travelers Insurance Company (Travelers), as an interpleader action under 28 U.S.C. § 1335. Jurisdiction was founded on the diversity of citizenship of the parties. Involved are the accidental death proceeds of two employer group insurance policies under which Jan A. Fields was covered at the time of his death. Named as defendants were Phyllis N. Fields, Petitioner, Jan A. Fields' first wife

and the named beneficiary of the two group policies, and Barbara G. Fields, Respondent, Jan A. Fields' widow and the Administratrix of his Estate.*

The pertinent facts which bear on this Petition are as follows: In May 1960 and December 1964 Travelers issued two group insurance policies to The Mead Corporation (Mead) under the terms of which certain employees of Mead and its subsidiary companies became insured against bodily injury, dismemberment and accidental death. The two policies provided accidental death benefits in the total amount of $103,000.

Jan A. Fields, an employee of the Chatfield Paper Company, a subsidiary of Mead, became covered under the two group policies on September 17, 1965 and December 1, 1965, respectively. Petitioner, Phyllis N. Fields, then the wife of Jan A. Fields, was named as the beneficiary of both policies.

On September 27, 1966, by decree of the Kenton Circuit Court, Kenton County, Kentucky, Petitioner was granted an absolute divorce from Jan A. Fields. Both parties were citizens of Kentucky and both appeared personally in the divorce action. The divorce decree of the Kenton Circuit Court provided in pertinent part:

> It is further considered and adjudged by the court that each party shall restore to the other such property not disposed of at the commencement of this action as either may have obtained directly or indirectly from or through the other during said marriage in consideration or by reason thereof.

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* Subsequent to the filing of the Complaint in Interpleader Charles P. Wagner was appointed by the Kenton County Court as Administrator of the Estate of Jan A. Fields in Kentucky. By agreement of the parties, Travelers was given leave to file an Amended Complaint in Interpleader for the purpose of naming Mr. Wagner as a defendant.

On June 6, 1967 Jan A. Fields married Barbara G. Fields.

On September 9, 1969 Jan A. Fields died intestate in the crash of Allegheny Flight 853 near Shelbyville, Indiana. Respondent, Barbara G. Fields, the widow, was appointed Administratrix of Jan A. Fields' Estate by the Court of Common Pleas of Hamilton County, Ohio, Probate Division.

Both the Estate of Jan A. Fields, acting through Respondent, Barbara G. Fields, Administratrix, and Petitioner, Phyllis N. Fields, the divorced former wife, asserted claims to the entire accidental death proceeds of the group insurance policies.

On the foregoing facts the case was presented to the Federal District Court for the Eastern District of Kentucky on cross motions for summary judgment. On December 16, 1970 the court granted summary judgment in favor of Respondent, Barbara G. Fields, Administratrix, ruling that:

(1) Under Kentucky law the restoration of property order in the divorce decree of the Kenton Circuit Court extinguished Petitioner's interest as the named beneficiary of the accidental death proceeds of the two group insurance policies and that, therefore, the proceeds of the policies belong to the Estate of the insured; and

(2) The full faith and credit clause of the United States Constitution requires that the restoration of property order in the divorce decree be given the same force and effect by the district court or by an Ohio court as it would be given by a Kentucky court and that, in accordance with such effect, the Estate of Jan A. Fields is entitled to receive the proceeds of the policies.

Phyllis N. Fields appealed to the United States Court of Appeals for the Sixth Judicial Circuit and on December

13, 1971, the court of appeals affirmed the judgment of the district court in favor of Barbara G. Fields, Administratix. Speaking for a unanimous panel, Circuit Judge McCree held that the district court properly applied the restoration of property order in the Kenton Circuit Court divorce decree which extinguished Petitioner's expectancy in the accidental death proceeds of the group insurance policies.

Before considering the issues raised in the Petition, we feel constrained to make several observations concerning Petitioner's "Statement of the Case." First, throughout the Petition, the phrase "Phyllis and the Children" appears. Presumably the inference to be drawn is that the Fields children have an interest in the proceeds of the group insurance policies which is somehow dependent upon the interest claimed by their mother, Phyllis N. Fields. In fact, if Phyllis N. Fields had prevailed in this action, she would have been awarded the proceeds outright and the children would have received nothing. On the other hand, under the judgment of the district court, the proceeds will be paid to the Estate of Jan A. Fields, two-thirds of which will pass to his children under the Ohio statute of descent and distribution.

Secondly, contrary to the implication imparted by Petitioner (Petition, 4) the insurance policies in question are not life insurance policies; they are group accident policies containing incidental death benefits. Once the nature of the policies is recognized it becomes clear that, contrary to Petitioner's contention, it would have been most unusual if the separation agreement between Petitioner and Jan A. Fields had contained any reference to the policies.

Finally, Petitioner states that the effect of the rulings of the district court and the court of appeals is to deprive her as Jan A. Fields' "intended beneficiary" of the

accidental death proceeds. (Petition, 5) As hereafter set forth, Petitioner's Kentucky divorce decree extinguished her expectancy as beneficiary of the accidental death proceeds without the necessity of any action by Jan A. Fields. It is, therefore, manifestly incorrect to suggest, as Petitioner does, that Jan A. Fields' failure to effect a change of beneficiary after the divorce indicates his intention that his divorced wife remain the beneficiary of the accidental death proceeds. Indeed, as fully recognized by the court of appeals, in order for Petitioner to remain as beneficiary, affirmative action by Jan A. Fields would have been required. *The Travelers Ins. Co. v. Fields*, 451 F. 2d 1292, 1300 (6th Cir. 1971).

ARGUMENT

The Petition for a Writ of Certiorari should be denied for the reasons that:

I. THE DECISION OF THE COURT OF APPEALS AFFIRMING THE JUDGMENT OF THE DISTRICT COURT IN FAVOR OF RESPONDENT, BARBARA G. FIELDS, ADMINISTRATRIX, WAS MANIFESTLY CORRECT UNDER APPLICABLE LEGAL PRINCIPLES.

(a) The Restoration of Property Order in the Divorce Decree of the Kenton Circuit Court Extinguished Petitioner's Expectancy * In the Accidental Death Proceeds of the Group Insurance Policies.

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* Throughout the Petition reference is made to Petitioner's "rights" under the two group insurance policies. While it is not uncommon to refer to the interest of a beneficiary as a "right," under Kentucky law where the right to change the beneficiary is reserved (as it was under both group policies) the named beneficiary has no "rights" in the policy but rather has what is characterized as an "expectancy." *McKenty v. Caldwell*, 287 Ky. 750, 155 S.W.2d 193 (1941); *Calavas, Adm'r v. Gouvas*, 269 Ky. 752, 108 S.W.2d 820 (1937). The same is true under the law of Ohio. *Stone v. Stephens*, 155 Ohio St. 595, 99 N.E.2d 766 (1951); *Oetting, Gdn. v. Sparks*, 109 Ohio St. 94, 143 N.E. 184 (1923).

Kentucky has a statutory requirement that each party to a divorce action restore to the other party all property received during marriage and in consideration thereof. Section 403.060, Kentucky Revised Statutes, provides in part:

> Upon final judgment of divorce from the bonds of matrimony, each party shall be restored all the property, not disposed of at the beginning of the action, that he or she obtained from or through the other before or during the marriage and in consideration of the marriage.

Under § 403.065, K.R.S., every decree of divorce must contain a restoration of property order in accordance with § 403.060. As noted above, the divorce decree under which Petitioner was granted an absolute divorce from Jan A. Fields contained such an order.

In construing § 403.060, the Kentucky Court of Appeals, in an unbroken line of decisions beginning in 1913, has held that the restoration of property order in an absolute decree of divorce granted by a Kentucky court extinguishes the divorced wife's rights as a beneficiary of an insurance policy on her husband's life notwithstanding the failure of the husband to effect a change of beneficiary after the divorce.* This rule was first announced by the Kentucky Court of Appeals in *Sea v. Conrad*, 155 Ky. 51, 159 S.W. 622 (1913), wherein the decedent purchased a term life insurance policy on his life and named his wife

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* This rule is subject to two exceptions: If the divorced wife paid part of the policy premiums from her separate earnings or funds, she is entitled to recover the premiums paid plus interest from date of payment out of the policy proceeds. *Salisbury v. Vick*, 368 S.W.2d 317 (Ky. Ct. App. 1963). If the divorced wife paid all the premiums from her separate earnings or funds she may recover the entire policy proceeds. *Johnson v. Johnson's Adm'r*, 297 S.W.2d 753 (Ky. Ct. App. 1957). Neither of these exceptions has any bearing on the present case.

as the beneficiary. Subsequently, he and his wife were divorced by a Kentucky court. The divorce decree contained a restoration of property clause identical to the one in the Fields' divorce decree. No change of beneficiary was made by the decedent after the divorce. Upon the death of the insured, both the insured's ex-wife and the administrator of the insured's estate claimed the insurance proceeds. The court held that the proceeds were payable to the estate, stating:

> There can be no doubt of the fact that [the ex-wife] was, by the terms of the policy issued on the life of [the deceased], named therein as the beneficiary because she was his wife and by reason thereof had an insurable interest in his life. It is patent therefore, that whatever interest or right she then had or took under the policy was acquired in consideration or by reason of her marriage to [the deceased]. The interest or right she thus acquired was destroyed by the judgment of divorce which operated by virtue of its terms and the provisions of [Sec. 403.060, K.R.S.] to divest her of it. * * *
>
> While [the ex-wife] at no time subsequent to the divorce and before [the deceased's] death had an insurable interest in his life, it is unnecessary to determine whether that fact, of itself, was sufficient to divest her of any interest in the policy of insurance; *it is sufficient to place our decision, as we do, on the ground that she was divested of such interest by the judgment of divorce and the effect* [*Sec. 403.060 K.R.S.*] *compels us to give it.* (155 Ky. at 56, 159 S.W. at 624 (emphasis added))

Accord, Schauberger v. Morel's Adm'r, 168 Ky. 368, 182 S.W. 198, (1916); *Warren v. Spurlock's Adm'r*, 292 Ky. 668, 167 S.W.2d 858, (1943); *Salisbury v. Vick*, 368 S.W.2d 317 (Ky. Ct. App. 1963).

Bissell v. Gentry, 403 S.W.2d 15 (Ky. Ct. App. 1963), is the most recent case in which the Kentucky Court of

Appeals has construed § 403.060. It is identical to the present case in all importan respects. *Bissell* was an action by the insurance company to have the court resolve adverse claims by the divorced wife of the insured and the administrator of the insured's estate to the proceeds of a group insurance policy. During his lifetime the insured had become covered under the terms of a group insurance policy issued to the insured's employer. The named beneficiary of the accidental death benefits of the group policy was the insured's wife. Subsequently, the insured and his wife were divorced in Kentucky. No change in the beneficiary designation was made by the insured after the divorce. Eight years later the insured died. In line with the court's previous decisions, the court held that an absolute divorce in Kentucky bars the divorced wife's rights as a designated beneficiary of insurance policies on her husband's life. In explaining its holding, the court stated:

> This court has held consistently that the interest of a spouse as beneficiary comes squarely within the restoration provisions of KRS 403.060, and as a result, every right of a divorced party as beneficiary of a policy of life insurance on the life of the other is extinguished, except in cases where the policy on the life of one of the parties is obtained during marriage and the other paid the premiums during the marriage. In such case he or she is entitled to continue payments and receive the proceeds of the policy upon maturity.
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> There is a statement that neither [the deceased] nor his ex-wife paid any of the premiums on the policy in issue. It was a group policy furnished to [the deceased's] employer as part of the terms of his employment. The employment of [the deceased] was the only consideration for issuing this policy and paying the premiums necessary to keep it in force. The result is that it is as though [the deceased] individually procured and paid for the policy. (403 S.W.2d at 15-16)

Accordingly, the policy proceeds were held payable to the decedent's estate.

Petitioner concedes that Kentucky law is as set forth above. (Petition, 7) Our purpose, however, in citing and discussing these cases at some length is to highlight the proposition that is central to the resolution of this case: *One of the incidents of the decree of divorce which Petitioner sought and obtained from a Kentucky court was the extinguishment, by operation of law, of her expectancy in the accidental death proceeds of the group insurance policies which are the subject of this action.*

(b) The District Court Was Required By the Full Faith and Credit Clause, U. S. Const. Art IV, § 1, as Well as Established Principles of Conflict of Laws to Recognize and Give Effect to the Restoration of Property Order in Petitioner's Kentucky Divorce Decree.

Whether the judgment in favor of Respondent, Barbara G. Fields, Administratrix, rests upon the full faith and credit clause (as stated by the district court) or upon conflict of laws principles (as stated by the court of appeals), the judgment is entirely in accordance with established precedents.

An understanding of the following facts illustrates that this case is governed by the full faith and credit clause:

(1) Petitioner, while a citizen of Kentucky, voluntarily invoked the aid of a Kentucky court to terminate her marriage to Jan A. Fields;

(2) The divorce decree which Petitioner sought and secured contained an order requiring each party to restore to the other, property obtained from the other during the marriage and in consideration thereof, as required by § 403.065, K.R.S.;

(3) With specific reference to the accidental death proceeds under the group insurance policies, the clear unequivocal effect of the restoration of property order

as declared in an unbroken line of decisions from the Kentucky Court of Appeals is the extinguishment, by operation of law, of Petitioner's expectancy as the designated beneficiary of such proceeds; and

(4) The Federal District Court for the Eastern District of Kentucky was bound by the dictates of the full faith and credit clause to enforce the restoration of property order in Petitioner's Kentucky divorce decree. See 28 U.S.C. § 1738; *Davis v. Davis*, 305 U.S. 32, 40 (1938).

Indeed, we can conceive of no more appropriate case than this for the application of the full faith and credit clause. The adverse parties in this action are precisely the same as in the Kentucky divorce action—Petitioner and Jan A. Fields, through his personal representative. If Petitioner should prevail in this action, the restoration of property order in Petitioner's Kentucky divorce decree would be wholly vitiated, a consequence clearly forbidden by the full faith and credit clause. See, *e.g.*, *Scherrer v. Scherrer*, 334 U.S. 343 (1948); *Estin v. Estin*, 334 U.S. 541 (1948); *Holm v. Shilensky*, 388 F.2d 54 (2d Cir. 1968).

While it should be clear that, by virtue of the foregoing logic, full faith and credit considerations control the disposition of this case, the district court's judgment derives support of equal cogency from established principles of conflict of laws. Consider the court of appeals' analysis:

(1) The restoration of property order in Petitioner's Kentucky divorce decree represents an involuntary assignment by Petitioner to Jan A. Fields of her expectancy in the accidental death proceeds of the group insurance policies; *E.g.*, *New England Mutual Life Ins. Co. v. Spence*, 104 F.2d 665 (2d Cir. 1939);

(2) In considering this case, a Kentucky court using conflict of laws rules would apply Kentucky law (discussed above) to determine the effect of the restoration of property order on Petitioner's expectancy, not-

withstanding the fact that the group insurance policies provide they were to be construed according to Ohio law. *New England Mutual Life Insurance Co. v. Spence, supra;* Restatement (Second) *Conflicts of Laws* § 209 (1971); see Annot., 97 A.L.R.2d 1399, 1401;

(3) The District Court was exercising diversity jurisdiction and, accordingly, was required to give the restoration of property order the same effect a Kentucky court would give it.

Thus, both the full faith and credit clause and conflict of laws principles require a ruling that the restoration of property order extinguished Petitioner's expectancy in the accidental death proceeds of the group insurance policies. Accordingly, we refrain from burdening the Court with further discussion of legal theory and authority which compels a judgment in favor of Barbara G. Fields, Administratrix. Instead, we direct our attention to Petitioner's legal theories and the authorities cited in support thereof.

II. APPLICATION OF THE RESTORATION OF PROPERTY ORDER TO EXTINGUISH PETITIONER'S EXPECTANCY IN THE ACCIDENTAL DEATH PROCEEDS OF THE GROUP INSURANCE POLICIES DID NOT CONSTITUTE A VIOLATION OF THE DUE PROCESS CLAUSE.

Although Petitioner's argument is less than clear, we understand her theory to be that the divorce decree entered by the Kenton Circuit Court, the restoration of property order contained in that decree and the full faith and credit clause have nothing to do with this case; that the due process clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1, forbids the application of the restoration of property order to extinguish Petitioner's expectancy in the accidental death proceeds of the group insurance

policies; and that the rights of the parties hereto are simply a matter of contract, to be governed by Ohio law.

Petitioner's due process argument is based upon two wholly inapposite cases, *Home Ins. Co. v. Dick*, 281 U.S. 397 (1930) (Petition, 9-10) and *Hartford Accident & Indem. Co. v. Delta & Pine Land Co.*, 292 U.S. 143 (1934) (Petition, 10).

In *Dick*, plaintiff, a citizen of Texas, brought suit in a Texas state court to recover on a fire insurance policy issued to him in Mexico by a Mexican insurance company for a tug which was destroyed in Mexican waters. In rem jurisdiction was obtained through the garnishment of two United States companies which had reinsured the risk. The garnishees contended that the suit was time-barred becaues it had not been commenced within the one year period specified in the insurance policy. The plaintiff contended that the policy limitation was invalid under a Texas statute which declared such provisions to be unenforceable. The Texas courts held for the plaintiff and the garnishees appealed to the Supreme Court which reversed, holding that since "all acts relating to the making of the policy were done in Mexico" and since "all things in regard to performance were to be done outside of Texas,"

> Texas was, therefore, without power to affect the terms of contracts so made. Its attempt to impose a greater obligation than that agreed upon and to seize property in payment of the imposed obligation violates the guaranty against deprivation of property without due process of law. (281 U.S. at 408)

Similarly, in *Delta & Pine, supra*, the Supreme Court held that the application of a Mississippi statute to invalidate a limitation in a bond issued in Tennessee violated the issuer's rights under the due process clause.

The facts of this case contrast markedly with the facts of *Dick* and *Delta & Pine*. In no event can it be said that

the restoration of property order affected the contractual obligations of Travelers. Its liability is acknowledged and the proceeds of the group insurance policies have been deposited in the registry of the district court as required by 28 U.S.C. § 1335.

Only Petitioner is raising the question of due process. Yet it is clear that Petitioner's expectancy in the accidental death proceeds was extinguished by appropriate legal process when she voluntarily invoked the jurisdiction of the Kenton Circuit Court to dissolve a marriage contract and allocate the property interests of the parties to that contract. As stated by Circuit Judge McCree in the case below:

> Whatever may have been the nature under Ohio law of appellant's interest in the Travelers policies, the state of Kentucky had the power, because of its jurisdiction over appellant, to assert jurisdiction over that interest. . . . This is not a case of a state attempting, as in *Delta & Pine, supra*, "to draw to (itself) . . . . control over the obligations of contracts elsewhere validly consummated and to convert them for all purposes into (its) interests as contrasted with those created at the place of the contract. . ." 292 U.S. at 150. Kentucky has no interest in defining and construing the contractual obligations; it does, however, have a strong interest in ascertaining and dividing whatever property is possessed by its citizens who are properly before its courts in a divorce action. The Fourteenth Amendment does not require that the state, in adjudicating the division of this property, ignore its own laws and look to the law of each state in which rights to the property originated to determine the effect of the divorce upon those rights. (451 F.2d at 1299-1300) (citations omitted.)

In the context of this lawsuit, the terms of the group insurance policies are irrelevant. Despite Petitioner's attempted obfuscation, the issue is not whether Peti-

tioner was the designated beneficiary under the group insurance policies but whether, in light of the restoration of property order in the Kenton Circuit Court divorce decree, Petitioner is entitled to receive the proceeds of those policies. When Petitioner invoked the jurisdiction of the Kenton Circuit Court and consented to the entry of the decree containing the restoration of property order, she surrendered her expectancy in the proceeds of the group insurance policies. She may now regret the consequences of that voluntary act, but she cannot complain that her constitutional rights have been violated.

A careful analysis of *Morgan v. United States*, 315 F. Supp. 213 (E.D. Ky. 1969) (Petition, 12-13), discloses that it affords no more support to Petitioner's argument than do the other cases cited in her Petition. In *Morgan*, a National Service Life Insurance policy was issued by the United States to the insured, who named his then wife as the beneficiary. Thereafter, the insured and his wife were divorced in Kentucky and the insured subsequently died without having effected a change of beneficiary. Both the former wife and the decedent's estate claimed the policy proceeds. The court held that federal regulations and the policy provisions controlled the disposition of the proceeds and, accordingly, awarded the proceeds to the designated beneficiary.

Petitioner asks rhetorically: "Why is *Morgan v. United States* any different from this case?" *Morgan* involved a policy issued by the Federal government pursuant to the provisions of the National Service Life Insurance Act, 38 U.S.C. § 701 et seq. In construing that Act. this Court had held, in *Wissner v. Wissner*, 338 U.S. 655 (1950), that, "Congress has spoken with force and clarity in directing that the proceeds (of a National Service Life Insurance policy) belong to the named beneficiary and no

other," and that to permit any state policy to bring about a different result would frustrate "the deliberate purpose of Congress." 338 U.S. at 658, 659. Therefore, the issue in *Morgan* was "one involving the primacy of federal law." *Morgan v. United States, supra*, 315 F. Supp. at 215. As stated by the Sixth Circuit in the present case,

> These cases merely involve particular applications of the familiar principle that, where the purpose of a federal law requires subordination of state policy, the supremacy clause proscribes application of the state law embodying that policy . . . . There is, of course, no supremacy clause to mandate the primacy of the policy of one state over that of another state. . . . (451 F. 2d at 1296) (Citations omitted)

Thus viewed, the *Morgan* decision is of no assistance to Petitioner.

The remaining authorities cited by Petitioner are directed at two propositions: first, that the group insurance policies are "Ohio contracts" and Kentucky courts will enforce a contract made elsewhere even though the terms thereof conflict with the public policy of Kentucky, (*Clarey v. Union Central Life Ins. Co.*, 143 Ky. 540, 136 S.W. 1014 (1911); *Union Central Life Ins. Co. v. Barnes*, 175 Ky. 364, 194 S.W. 339, (1917) (Petition, 17-18); and, second, that, under Ohio law, Petitioner's interest in the group insurance policies was not affected by her Kentucky divorce decree. (Petition, 19-21).

Responding to Petitioner's contract argument, we remind the Court that this case does not involve the enforcement of a contract, the terms of which are in conflict with the public policy of Kentucky. The touchstone of this case is Petitioner's divorce decree which terminated her marriage and foreclosed her expectancy in the accidental death proceeds.

With regard to Petitioner's final contention, while it is true that an Ohio divorce (or a divorce obtained in a jurisdiction which has no restoration of property statute) does not terminate the wife's rights as a beneficiary under her husband's life insurance policies, there is no reason to believe that an Ohio court could reach a result in this case any different than the result reached by the district court. Petitioner has not cited, and we have not found, any Ohio decisions relating to the effect which a Kentucky divorce or a divorce granted in a state which requires a restoration of property has upon the right of a divorced wife to the proceeds of a life insurance policy. Indeed it is elementary that under such circumstances an Ohio court would be required to give full faith and credit to the sister state decree. See, *e.g.*, *Scherrer v. Scherrer*, *supra*; *Wood v. Wood*, 174 Ohio St. 318, 189 N.E.2d 34 (1963); *Armstrong v. Armstrong*, 117 Ohio St. 558, 160 N.E. 34 (1927). The district court so held. *The Travelers Ins. Co. v. Fields*, 323 F.Supp. 387, 390 (E.D. Ky. 1970).

III. THE DECISION OF THE SIXTH CIRCUIT COURT OF APPEALS DOES NOT CONFLICT WITH THE DECISION OF THE SEVENTH CIRCUIT COURT OF APPEALS IN FEDERAL LIFE INS. CO. V. TIETSORT.

In her eleventh hour attempt to salvage her unmeritorious cause, Petitioner argues that the decision of the Sixth Circuit Court of Appeals, affirming the district court's judgment for the Respondent, is in conflict with the decision of the Seventh Circuit Court of Appeals in *Federal Life Ins. Co. v. Tietsort*, 131 F.2d 448 (7th Cir. 1942), *cert. denied*, 318 U.S. 768 (1943). Analysis of Judge Otto Kerner's opinion in *Tietsort* reveals that the purported conflict is an illusion, fabricated from dicta and speculation.

The basic distinction between this action and the *Tietsort* case is that *Tietsort* did not involve a restoration of property order. The holding of *Teitsort* is that, under Illinois law, the designation of a particular beneficiary under an Illinois insurance policy was not affected by an Illinois divorce. To speculate how the Seventh Circuit would treat a restoration of property order in an Illinois divorce decree is improper. To conclude that the Seventh Circuit would refuse to accept the validity of the restoration of property order in the Kenton Circuit Court's decree is patently erroneous.

To bolster her contention that *Tietsort* presents a conflict, Petitioner refers to what is now Ill. Rev. Stat. ch. 40, § 18 (1969) as a " 'restoration' statute, having in mind the same effect as that contemplated by KRS 403.060 and 403.065. . . ." (Petition, 23) In fact, Judge Kerner's opinion did not refer to that statute, which, by its terms, is permissive only, nor is there any indication that that statute was invoked in the Illinois divorce action which preceded the *Tietsort* case. In contrast, the applicable Kentucky statutes are mandatory, rather than permissive, and they were specifically implemented through the restoration of property order contained in the Kenton Circuit Court's divorce decree.

Although *Tietsort* may be instructive concerning the law of Illinois, the holding of that case is demonstrably not in conflict with the decision of the Sixth Circuit in this action, for the essential facts of the two cases are not the same. Accordingly, *Tietsort* does not provide a basis for granting the Petition for a Writ of Certiorari.

CONCLUSION

Petitioner has failed to show any basis for granting her Petition for a Writ of Certiorari. The deci-

sion of the Sixth Circuit Court of Appeals in this case is not in conflict with any decision of any other court of appeals. Nor is the decision of Sixth Circuit in conflict with any decision of this Court.

The controlling fact in this action is that when Petitioner sought and obtained an absolute divorce from Jan A. Fields in Kentucky her expectancy in the subject group insurance policies was extinguished by operation of the restoration of property order in her divorce decree. The decisions of the courts below in favor of Respondent, Barbara G. Fields, Administratrix, flow irresistably from this fact. We respectfully submit that the Petition for a Writ of Certiorari should be denied.

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